

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

DOCKET FILE 95-172

In re Applications of)

RAINBOW BROADCASTING COMPANY)

For an extension of time)
to construct)

and)

For an Assignment of its)
construction permit for)
Station WRBW(TV), Orlando, Florida)

TO: The Honorable Joseph Chachkin
Administrative Law Judge

GC Docket No. 95-172
File No. BMPCT-910625KP
File No. BMPCT-910125KE
File No. BTCCT-911129KT

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Federal Communications Commission
Office of Secretary

STATEMENT OF PRESS BROADCASTING COMPANY, INC.
FOR THE RECORD, INVITATION FOR RESPONSE FROM
RAINBOW BROADCASTING COMPANY AND RAINBOW BROADCASTING, LIMITED,
OR, IN THE ALTERNATIVE, PETITION TO ENLARGE ISSUES

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July 12, 1996

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SUMMARY

The record of this proceeding demonstrates that Rainbow Broadcasting Company ("RBC") and Rainbow Broadcasting, Limited ("RBL"), have failed to undertake good faith efforts to respond fully and completely in the discovery process herein. Rather, RBC and RBL appear to have, at a minimum, lacked candor in their responses to discovery.

This misconduct can and should be considered in the ultimate evaluation of the qualifications of RBC and/or RBL to become or to remain Commission permittees. Such consideration does not require the addition of any issues, since the misconduct has occurred before the Presiding Judge and since RBC and RBL are aware of the standards expected of them and both have had multiple opportunities to explain their conduct. And, should either RBC or RBL believe that some further explanation on their part might assist in understanding their conduct, Press invites either or both of them to respond hereto.

In the event that the Presiding Judge believes that consideration of these matters is not permissible absent a specific issue, Press hereby requests that such an issue or issues be added herein.

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1. Press Broadcasting Company, Inc. ("Press") hereby submits this Statement for the Record (a) to advise the Presiding Judge and the other parties hereto of Press' position with respect to certain matters described below; and (b) to specifically and expressly invite Rainbow Broadcasting Company ("RBC") and Rainbow Broadcasting Limited ("RBL") to submit comments responsive to the instant Statement. As set forth below, Press does not believe that any enlargement of issues in this proceeding is required in connection with the matters discussed herein; however, in the event that the Presiding Judge disagrees with Press on this point, Press requests that this pleading be deemed a Petition to Enlarge Issues pursuant to

Section 1.229 of the Commission's Rules. ^{1/}

Background

2. In February, 1996, Press and the Separate Trial Staff ("STS") served on RBC and RBL document production requests seeking various documents from the files of RBC, RBL and their respective counsel and representatives. In particular, Press sought the production, inter alia, of: (a) materials produced or relied upon as evidence by RBC in Rey v. Guy Gannett Publishing Co. ("the Miami Tower Litigation") (Press Request No. 2(e)); and (b) all documents relating in any way to communications between RBC and Guy Gannett Publishing Co. ("Gannett") from January, 1986 through January 25, 1991 concerning construction of RBC's station (Press Request No. 3(e)).

3. RBC did not object to the latter request (seeking documents relating to communications between RBC and Gannett concerning construction of RBC's station).

4. With respect to the materials sought from the Miami Tower Litigation, RBC opposed Press' request as irrelevant and overly burdensome. At the April 11, 1996 prehearing conference

^{1/} To the extent that the instant submission may be treated as a petition to enlarge issues, it is being filed within 15 days of the June 28, 1996 hearing session in which certain of the relevant events discussed in the text, infra, occurred. Therefore, as a petition to enlarge issues, it is timely. To the extent that the Presiding Judge may deem this pleading to require separate leave to file, Press hereby specifically requests such leave. Good cause exists for the acceptance and consideration of this pleading, as it addresses matters relating to the conduct of parties to this proceeding and the effect of that conduct on the evaluation of the qualifications of those parties to be Commission permittees.

at which Press' document request was addressed, the following colloquy occurred with respect to Press' request for documents from the Miami Tower Litigation:

JUDGE CHACHKIN: Is that [the materials from the Miami Tower Litigation requested by Press] publicly available?

MS. POLIVY: Yes.

JUDGE CHACHKIN: Where is it?

MR. EISEN: In Florida.

MS. POLIVY: In Florida.

JUDGE CHACHKIN: Do you have those documents? Do you have the file?

MR. EISEN: No, Your Honor. We weren't counsel.

JUDGE CHACHKIN: Well, if you do not have the file, then they can't produce the file.

Tr. 274. Shortly thereafter, counsel for RBL, Ms. Polivy, also pointed out, with respect to certain materials from the Miami Tower Litigation, that

we do not have any of those documents. I don't know whether documents were produced [in the Miami Tower Litigation], whether they were requested, in fact.

Tr. 276. The Presiding Judge denied Press' motion to compel production of documents from the Miami Tower Litigation. Id.

5. An initial question concerning the actual extent of RBC/RBL's compliance with its discovery obligations arose during the May 16, 1996 deposition of Leticia Jaramillo, one of RBC's two principals. Ms. Jaramillo was shown copies of the document production requests served on RBC by the STS and Press, and asked whether she had ever seen them. Ms. Jaramillo indicated she had

not. She was then asked whether, since the initiation of discovery herein, she had been asked by anyone to review her files for documents responsive to the discovery requests. She responded that she had not been requested to do so. See Attachment A hereto (excerpt from deposition of Ms. Jaramillo). ^{2/}

6. After the close of discovery as of June 7, 1996, RBC and RBL submitted their joint direct case exhibits. Those exhibits included, inter alia, ten letters which had not previously been produced, even though they clearly fell within the scope of outstanding document requests. Simultaneously with the submission of the direct case exhibits, counsel for RBC, Mr. Eisen, provided Press and the STS with additional copies of the responsive materials under cover of a letter which read, in its entirety:

During preparation of the Rainbow Broadcasting Company/Rainbow Broadcasting, Limited direct case, several documents were uncovered in Orlando, Florida that were not produced during document production and which should have been.

I only received these documents this morning, June 11, 1996, and I am providing them to you as soon as possible.

A copy of that letter is included as Attachment B hereto. No explanation was offered concerning the circumstances which led to the failure to produce these documents in a timely manner. Nor

^{2/} Since Ms. Jaramillo subsequently stated that she did not have any documents in her files, the failure of anyone to ask her to search her files appeared at the time to be of limited actual impact or importance, and Press declined to pursue the matter.

did RBC offer any explanation as to why RBC apparently happened to undertake a further search during the four-day period between the close of discovery and the direct case exhibit exchange, a further search which just happened to turn up documents which RBC believed to be sufficiently useful to warrant their submission as part of the RBC/RBL direct case.

7. Among the documents produced after the close of discovery was a letter from Joseph Rey, General Partner in RBC, to James E. Baker, an officer of Gannett, dated July 22, 1991. The first sentence of that letter indicated that it was being written "in response to your letter of July 9, 1991". See RBC/RBL Exh. 7, page 18. The documents produced by RBC did not, however, include a copy of any letter from Mr. Baker to Mr. Rey dated July 9, 1991.

8. By letter dated June 12, 1996 -- the day after the post-discovery production of the additional documents -- the STS requested that counsel for RBC produce the "incoming correspondence to which any of the letters you produced responds". A copy of the STS letter request is included as Attachment C hereto.

9. Approximately one week later, on June 18, 1996, Mr. Eisen responded to the STS request with a letter, a copy of which is included as Attachment D hereto. In that letter Mr. Eisen advised that

[n]o other relevant documents, including those to which you referred in your June 12, 1996 letter, were located, and despite a further effort specifically responsive to your request, this remains the case.

Mr. Eisen also offered the following explanation for RBC's failure to produce these documents in a timely manner:

The tone of your letter suggests that RBC may have some hidden reason for producing these documents at a late date. It does not. The WRBW-TV offices have been moved at least twice during the past several years, and we have made every effort to uncover relevant documents, sometimes under difficult circumstances where past files were frequently located through luck. Many of the documents were found in packed boxes that had survived the office moves, the contents of which had not been placed into any discrete file.

The documents produced to you on June 11 were located in a box that had escaped review during the earlier stages of discovery.

10. In further response to the STS's letter of June 12 requesting additional responsive documents, Ms. Polivy, counsel for RBL, wrote to the STS on June 19, 1996. A copy of that letter is included as Attachment F hereto. There, Ms. Polivy opined that the STS owed an apology to Mr. Eisen because of what Ms. Polivy characterized as an "attack by innuendo" on Mr. Eisen. Ms. Polivy queried:

Was it your suggestion that in complying with his formal undertaking at the time of document exchange to forward newly discovered responsive documents at the time of their discovery, [counsel for RBC] was in fact both forwarding material previously unethically withheld and continuing unethically to withhold (or not look for) additional material which he could have forwarded?

Implicit in Ms. Polivy's query is an acknowledgement of the continuing obligation to look for and disclose documents responsive to discovery requests.

11. The RBC/RBL direct case was presented in hearing sessions on June 25-28. On June 28 -- the final day of the

presentation of the RBC/RBL direct case -- during redirect examination of Joseph Rey, RBC/RBL offered into evidence a document which included, as an attachment, a copy of the July 9, 1991 letter from Mr. Baker to Mr. Rey -- a document which the STS had specifically requested in its June 12, 1996 letter and which counsel for RBC had specifically advised the parties could not be located. ^{3/}

12. Counsel for Press questioned why this document was not previously produced when it had, apparently, been available to RBC/RBL for some time. Tr. 949-950. Ms. Polivy responded that "we were unaware of the document and that it was attached", and she acknowledged that "[h]ad we [been aware of it], we would certainly [have] turned it over to you." Tr. 950. Mr. Eisen responded that "this was a copy of a letter that was appended to a judicial document. It wasn't something that was ordinarily in the files of the permittee." Id.

13. In response to further inquiries from the Presiding Judge, Ms. Polivy acknowledged that the document had been in her files, but that she "did not look at the attachments of the amended complaint . . . [b]ecause it did not occur to me . . .

^{3/} When Mr. Eisen advised, in his June 18 letter to the STS, that the letters from Mr. Baker were not available, Press -- aware, as a result of the post-discovery disclosure of the letters from Mr. Rey, of the possible existence of letters from Mr. Baker -- undertook its own efforts to track down copies of those letters from Mr. Baker's office. Press' efforts were successful, and copies of two letters from Mr. Baker to Mr. Rey have been received into evidence as Press Exhibits Nos. 6 and 7. However, had the Rey letters not surfaced after the close of discovery, Press would not have been aware of the existence of the Baker letters to which the Rey letters responded.

that there would be any correspondence there." Tr. 952.

Ms. Polivy went on to say

I did not look at this until last night; in fact, until this morning when Mr. Cole raised the question. I was unaware that the letter that he had been seeking was there.

Tr. 952. She did not explain how a determination had been made to offer that document into evidence (and to have the document photocopied for that purpose) without the document having been examined in its entirety.

14. The Presiding Judge concluded that the document should have been produced earlier. Tr. 952. There then ensued discussion concerning what relief would be appropriate. Tr. 952-961.

15. In the course of that discussion, Ms. Polivy sought to downplay the fact that this particular pleading from the Miami Tower Litigation happened to be in her files:

We have gone from the fantastic to the absurd, Your Honor. There is in our dead file an amended complaint, to which there was attached something that was already known to the opposite side. There is no damage whatsoever.

Tr. 957. ^{4/} Counsel for Press reminded the Presiding Judge and other counsel of the fact that, several months earlier, Press's document request had been denied with respect to materials from the Miami Tower Litigation because that litigation had supposedly not been handled by current communications counsel for RBC/RBL. See Paragraph 4, above. In apparent contradiction of that claim

^{4/} With respect to Ms. Polivy's assertion that the Baker letter was "already known" to Press, see Footnote 2, above.

of non-involvement, the pleading which RBC/RBL were offering into evidence listed Ms. Polivy as the plaintiffs' first counsel on the signature page. See Attachment F hereto.

16. In response to this observation, Ms. Polivy again attempted to minimize any involvement she might have had in the litigation of the Miami Tower Litigation:

Your Honor, as this question came up before, I advised you on the complaint, we were not counsel. Our name was put on it as a courtesy. We didn't sign them. We never saw these things before they were filed. We did not participate.

Tr. 961.

17. As it turns out, however, Ms. Polivy's claim that she "w[as] not counsel" was not completely accurate: as reflected in Attachment G hereto, a formal Notice of Appearance reflecting her as counsel for RBC was submitted in the Miami Tower Litigation on December 21, 1990. That Notice of Appearance indicated that, as of that date, "all pleadings directed to said Plaintiffs [i.e., RBC and its principals] shall be copied to" Ms. Polivy at the address of her Washington, D.C. office. Thus, the claim which RBC/RBL had consistently advanced since early in discovery -- that, because they supposedly were not counsel in the Miami Tower Litigation, they did not have copies of files from that case -- appears also to have been inaccurate.

18. So too is the claim that Ms. Polivy "did not participate" as counsel in the Miami Tower Litigation. Included as Attachment H hereto are copies of portions of the transcript of the hearing conducted in January, 1991 in the Miami Tower

Litigation. These portions demonstrate that, in that proceeding, Ms. Polivy: (a) attended the hearing sessions as counsel for the Plaintiffs; (b) conducted direct examination, redirect examination, cross examination, and voir dire examination of witnesses and engaged in evidentiary arguments before Judge Marcus; (c) spoke with the Court as counsel for the Plaintiffs with respect to the scheduling of witnesses; and (d) appeared as a witness in that proceeding, notwithstanding the fact that she was also counsel for one of the parties.

Discussion

19. It is a fundamental principle of the Commission's regulatory system that the Commission must rely heavily on the completeness and accuracy of the submissions made to it; this duty of candor is basic and well-known. RKO General, Inc. v. FCC, 670 F.2d 215 (D.C. Cir. 1981). The Commission need not "play procedural games with those who come before it in order to ascertain the truth". Garden State Broadcasting Limited Partnership v. FCC, 996 F.2d 386 (D.C. Cir. 1994), quoting RKO General, supra, 670 F.2d at 229. Concealment of information, evasion of FCC requirements or other failures to produce information can result in disqualification for lack of candor. E.g., Fox River Broadcasting, Inc., 93 FCC2d 127, 129 (1983). It is not important that the matters concealed by the party may be of limited, or even no, actual consequence:

the fact of concealment may be more significant than the facts concealed. The willingness to deceive a regulatory body may be disclosed by immaterial and useless deceptions as well as by material and

persuasive ones. We do not think it is an answer to say that the deception was unnecessary and served no purpose.

FCC v. WOKO, Inc., 329 U.S. 223, 227 (1946). See also, e.g., Richardson Broadcasting Group, 70 R.R.2d 1073 (1992), aff'd by mem. sub nom. Younts v. FCC, 995 F.2d 306 (D.C. Cir. 1993) (Table).

20. In the instant case, RBC/RBL have failed to satisfy the obligation of candor imposed on them as parties before the Presiding Judge and the Commission. RBC/RBL were required to undertake a thorough and diligent search of all available files to locate documents responsive to the discovery requests of the STS and Press. That requirement extended not only to RBC and RBL, but also, by the express and explicit terms of the discovery requests, to their respective counsel as well.

21. RBC/RBL, and RBL's counsel, elected not to comply with that requirement. First, their document search was plainly inadequate in light of the fact that one of RBC's two principals, Ms. Jaramillo, was not even notified of the document request and was not asked to review any files she might have had.^{5/} Failure to seek documents from one of two principals is hard to fathom; it certainly does not represent a good faith effort to respond to discovery requests.

^{5/} While, as it turned out, Ms. Jaramillo may not have had any files (and, in light of the subsequent revelations in this case, the possibility that she may indeed have some documents cannot be discounted), the fact is that RBC/RBL and their counsel could not have known that with any certainty unless they asked her. And Ms. Jaramillo testified that no one had asked her.

22. Then there is the matter of the correspondence (since received into evidence as RBC/RBL Exhibit 7) which suddenly appeared, as if by happy coincidence, after the close of discovery but, surprisingly, on the very day of direct case exhibit exchange, four days later. ^{6/} When the STS inquired about the availability of other documents expressly referenced in the new-found correspondence, Mr. Eisen denied that RBC had any reason to have withheld the documents in question. He provided a non-specific explanation for the lateness of the disclosure of the correspondence:

The WRBW-TV offices have moved at least twice during the past several years, and we have made every effort to uncover relevant documents, sometimes under difficult circumstances where past files were frequently located through luck. Many of the documents were found in packed boxes that had survived the offices moves, the contents of which had not been placed into any discrete file.

The documents produced to you on June 11 were located in a box that had escaped review during the earlier stages of discovery.

See Attachment D hereto.

23. Still, substantial questions remain: How could a box of files containing (as it turned out) apparently relevant materials "escape[] review" for the full three and one-half month period of discovery, but then suddenly get opened and reviewed the very

^{6/} In his June 11 letter transmitting those documents to opposing counsel, Mr. Eisen stated very cautiously that he had "only received these documents this morning, June 11, 1996". He did not explain how those documents came to be located just in time to be included in RBC/RBL's direct case. Nor did he explain when he first learned of the existence and ready availability of those documents.

day of direct case exchange? ^{2/} Who exactly undertook the search in the first place? Who undertook the ultimately successful, if somewhat belated, search? Who directed or supervised the search effort? Where exactly was the box which "escaped review" located? Are there other boxes which have also "escaped review"? Are there other files in the possession of RBC/RBL or its agents which have similarly "escaped review"? If so, how did that happen? These questions remain largely unanswered to date.

24. We do know that files in the possession of RBL's current counsel (and RBC's former counsel), Ms. Polivy, also appear to have "escaped review". Certain files (referred to as "dead files" by Ms. Polivy, Tr. 955) containing materials relating to RBC, and particularly the Miami Tower Litigation, may not have been searched at all.

25. The documents which RBC/RBL did turn over on June 11 suggest that Ms. Polivy's unsearched files may also have included other materials pre-dating the Miami Tower Litigation. Among the letters turned over on June 11 was a letter, dated October 19, 1990, from Malcolm F. Fromberg to James Baker. (A copy of that

^{2/} Mr. Eisen indicated that he had received the documents in question on June 11, the suggestion being that that was when they were first turned up. If the documents were, in fact, located only June 11, the question is why that box of materials just happened to be searched on that day, and not before. If, on the other hand, Press is misreading Mr. Eisen's letter, and if the documents had actually been located prior to June 11, the question is why the documents had not been disclosed to the opposing parties (and, presumably, Mr. Eisen) until June 11. RBC/RBL have never addressed those questions.

letter, which has been received in evidence as RBC/RBL Exh. 7, pages 15-16, is included as Attachment I hereto.) The second page of that letter bears the notation "(BCC: Margaret Polivy, Esq.)". Press believes that that notation was intended to indicate that Ms. Polivy was sent a "bcc" (or blind carbon copy) of that letter. If Press is correct in that regard, then Ms. Polivy's files would normally be expected to have contained that copy of the letter, and it should have been located and produced during the routine course of discovery. It was not.

26. And then there is the matter of Ms. Polivy's supposed non-involvement in the Miami Tower Litigation, a non-involvement which was invoked repeatedly when Press sought production of documents relating to the Miami Tower Litigation. See Paragraphs 4 and 16, above. It appears that Ms. Polivy has repeatedly sought to create the distinct impression that she was not involved in the Miami Tower Litigation. Yet, documents obtained from the record of that case contradict that impression. Ms. Polivy claims that her name was included on pleadings merely as a courtesy or a formality, yet the docket reflects that a formal notice of appearance on behalf of Ms. Polivy was filed in the Miami Tower Litigation and that she actively participated in the trial of that case in January, 1991. These facts raise serious questions concerning the credibility of her representations to the Presiding Judge concerning the availability to her of documents relating to the Miami Tower

Litigation. ^{8/}

27. This is especially so in view of the plain language of the notice of appearance (Attachment G hereto) which specifically instructed parties to serve copies of pleadings on Ms. Polivy. Contrary to the impression she sought to create (see Paragraphs 4 and 16, above), the formal papers of the Miami Tower Litigation were apparently readily available to her, in Washington.

28. Thus, the conduct of RBC and RBL and their representatives during the course of discovery in the instant proceeding was plainly lacking in candor, if not affirmatively misleading. In Press' view, this obvious lack of candor can and should be considered in connection with the disposition of the designated issues herein. Such consideration is especially appropriate in view of the fact that two of the issues specifically designated in this case are misrepresentation/lack of candor issues. To the extent that the Presiding Judge

^{8/} It does not matter that some of the lack of candor before the Presiding Judge may be attributable to counsel, rather than the party itself. See, e.g., WWOR-TV, Inc., 70 R.R.2d 752, 760-62 (1992), aff'd sub nom. Garden State Broadcasting Limited Partnership v. FCC, 996 F.2d 386 (D.C. Cir. 1993); RKO General, supra. This is especially so where, as here, Joseph Rey, the dominant principal of RBC and RBL, attended all direct case hearing sessions and was therefore present when, for example, Ms. Polivy indicated that she "did not participate" in the Miami Tower Litigation -- an assertion which Mr. Rey knew or should have known to be less than candid and accurate. Mr. Rey made no apparent effort to correct the record. Moreover, it appears that Mr. Rey himself was directly involved in the document production effort. Tr. 362. Under these circumstances, attribution of counsel's misconduct to the client/applicant is appropriate. See, e.g., Mark A. Perry, 4 FCC Rcd 6500 (Rev. Bd. 1989); Communi-Centre Broadcasting, Inc. v. FCC, 586 F.2d 1551 (D.C. Cir. 1988).

concludes that RBC/RBL's misconduct with respect to the discovery process in the course of the hearing reflects a serious lack of candor and/or willingness to mislead the Presiding Judge and the Commission, such a conclusion should be deemed to reinforce any adverse conclusions under the designated misrepresentation/lack of candor issues. Where a party is found to have engaged historically in such misconduct, and then is found to have continued to engage in similar misconduct even through the hearing process, the existence of an irremediable tendency to flout the Commission's authority becomes etched even more clearly in the record.

29. Other than on the contingent basis described below, Press is not hereby seeking the addition of any issues to permit further exploration of the matters addressed above. It is well-established that

lack of candor need not be specially designated as a hearing issue because "truth and candor are always in issue." [citations omitted] . . . [A]dverse candor findings can be the basis for disqualifying an applicant, even in the absence of a specified candor issue, provided: (1) the misconduct occurred directly before the agency and was of sufficiently blatant and unacceptable dimension that its existence could not be gainsaid; (2) it was evident that the party had actual notice of the conduct at issue and was not prejudiced by surprise; and (3) the party had an opportunity to speak in its own behalf. . . .

The Old Time Religion Hour, Inc., 54 R.R.2d 989, 995 (Rev. Bd. 1983), citing RKO General, supra, 670 F.2d at 235-236. See also, e.g., Richardson Broadcasting Group, supra; Greenco, Inc., 39 FCC2d 732, 736-37 (1973).

30. In the instant case, the misconduct described above has

occurred during the course of the instant proceeding, in several instances directly before the Presiding Judge. Clearly, the first element of the standard quoted above is satisfied.

31. So, too, is the second element. Good faith compliance with discovery requests is demanded of parties to hearing proceedings. Ms. Polivy has specifically demonstrated her recognition of that obligation in her June 19 letter to the STS, quoted above in Paragraph 10. RBC/RBL cannot claim to be surprised that failure to comply with that acknowledged standard could be held against them.

32. And finally, with respect to the opportunity for RBC/RBL to be heard as to these matters, the record is clear that RBC/RBL have already had multiple opportunities to explain the manner in which they have undertaken their responses to discovery requests. An explanation could have been offered at Ms. Jaramillo's deposition (or immediately thereafter) concerning the failure to ask her for responsive documents. An explanation could have been offered on June 11, when the new-found correspondence was provided to the STS and Press. An explanation could have been offered after the STS, in its June 12 letter, requested additional materials. An explanation could have been offered at the hearing itself, both when the matter of the new-found correspondence was raised, and later, on the last day of the direct case presentation, when the matter of the new-found document from the Miami Tower Litigation was raised. An explanation could have been offered in Ms. Polivy's July 3, 1996

certification (see Attachment J hereto), required by the Presiding Judge, relative to her search of her files. No explanations, however, have been forthcoming. ^{2/}

33. To date, the limited information RBC/RBL have provided has been less than enlightening. That is a choice those parties have made, and if they have elected not to explain why they have not been forthcoming in discovery, so be it: that is a decision which can be included in the overall assessment of RBC/RBL's qualifications.

34. But, in order to be absolutely sure that RBC/RBL have had every conceivable opportunity to present their side of these matters, Press hereby specifically invites RBC/RBL to respond, to provide full and detailed information concerning the manner in which they sought to comply with their discovery obligations. Such a response would include detailed descriptions of: who undertook document searches; when such searches were undertaken; where they were undertaken; why certain files were searched but not others; who reviewed documents which were located, in order to determine which located documents should be produced; and similar information. Such a response would also include a reasonably detailed listing of the files maintained in Ms. Polivy's "dead files" which were not (apparently) reviewed at

^{2/} This is not to say, however, that RBC/RBL have been completely mum. To the contrary, in response to the STS's benign request (in its June 12 letter) for the production of additional responsive documents, counsel for RBC sought to raise questions concerning the STS's objectivity, while counsel for RBL elected aggressively to assail the STS's request. See Attachments D and E.

all, and an explanation as to why those files were not reviewed. To the extent any such response is based on the representations of any principal or employee of either RBC or RBL, it would be appropriate to include a statement of such person(s) under penalty of perjury.

35. Of course, anything RBC/RBL may choose to submit in response to Press's Statement for the Record can and should be considered against the backdrop of the evidentiary record which has already been compiled herein.


36. As noted, Press believes that all of the matters addressed in the instant Statement for Record can and should be considered in the ultimate disposition of this case without the need for any additional issues. However, to the extent that the Presiding Judge determines that these matters cannot be considered without the addition of one or more issues relative the matters discussed above, then Press hereby specifically requests the addition of the following issue:

To determine (a) whether Rainbow Broadcasting Company and/or Rainbow Broadcasting, Limited engaged in conduct which was intentionally misleading or lacking in candor in connection with the discovery process of this proceeding and, if so, (b) the effect of such misconduct on their qualifications to remain or to become Commission permittees.

WHEREFORE, for the reasons stated, Press Broadcasting Company, Inc. states for the record its position set forth above and invites Rainbow Broadcasting Company and Rainbow Broadcasting, Limited to respond to this statement. In the event that the Presiding Judge determines that consideration of the

foregoing matters in the ultimate disposition of this case requires the addition of further issues, Press requests the addition of one or more issues consistent with the foregoing.

Respectfully submitted,


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July 12, 1996

ATTACHMENT A

Excerpt from Transcript of Deposition
of Leticia Jaramillo
conducted May 16, 1996

COPY

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

-----X
IN RE :
Applications of : GC Docket No.
RAINBOW BROADCASTING COMPANY : 95-172
For an extension of time : File No.
to construct : BMPCT-
and : 910625KP
For an Assignment of its : File No.
Construction permit for : BMPCT-
Station WRBW (TV), Orlando, Florida : 910125KE
To: Rainbow Broadcasting Company :
-----X

Washington, D.C.

Thursday, May 16, 1996

Deposition of

LETICIA JARAMILLO

a witness, called for examination by counsel
for Press Broadcasting Company, pursuant to
agreement of counsel, beginning at
approximately 12:30 p.m., at the law offices of
Bechtel & Cole, 1901 L Street, N.W.,
Washington, D.C., before Ginger Marie Brewster,

BETA